

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:20-cr-30-JPH-MJD
)	
JAVON CUSHENBERRY,)	
)	
Defendant.)	- 01

REPORT AND RECOMMENDATION

On June 9, 2023, the Court held a final hearing on the Petition for Warrant for Offender Under Supervision filed on January 18, 2023 [Dkt. 62] and an initial hearing on the Supplemental Petitions for Warrant for Offender Under Supervision filed on March 8, 2023 [Dkt. 73] and April 25, 2023 [Dkt. 77]. Defendant appeared in person with his appointed counsel Harold Samuel Ansell. The government appeared by Jeremy Fugate, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Felecia Bain.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant of his rights and provided him with a copy of the supplemental petitions [Dkts. 73 & 77]. Defendant orally waived his right to a preliminary hearing on the supplemental petitions [Dkts. 73 & 77].

2. After being placed under oath, Defendant admitted violation numbers 1-3 [Dkt. 62] and violation number 4 [Dkt. 73.] Government orally moved to withdraw the remaining violations, violation number 5 [Dkt. 77], which motion was granted by the Court.

3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation
Number**

Nature of Noncompliance

- 1 **"You shall report to the probation officer in a manner and frequency directed by the court or probation officer."**

As previously reported to the Court, the offender failed to report for scheduled appointments on September 15, and September 19, 2022.

- 2 **"You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and dosage."**

As previously reported to the Court, the offender provided a urine sample on September 21, 2022, that yielded positive for marijuana, cocaine, and Fentanyl. On October 11, 2022, he provided a urine sample that yielded positive for amphetamines, cocaine, and Fentanyl. Additionally, on October 13, 18, and November 9, 2022, he provided urine samples that yielded positive for Fentanyl.

- 3 **"You shall not commit another federal, state, or local crime."**

On January 4, 2023, the offender was arrested in Boone County, Indiana, under cause number 06D02-2301-F6-000033, for Possession of Methamphetamine (felony). He is presently being held in the Boone County Jail with a bond set at \$5,000 surety/\$500 cash. The next court date is February 22, 2023.

- 4 **"You shall reside in a residential reentry center for a term of up to 180 days. You shall abide by the rules and regulations of the facility."**

On March 7, 2023, the offender failed to return to the facility as directed following emergency medical care. Therefore, his whereabouts are currently unknown.

4. The parties stipulated that:

- (a) The highest grade of violation is a Grade B violation.
- (b) Defendant's criminal history category is IV.

- (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 12 to 18 months' imprisonment.

5. The parties jointly recommended a sentence of 15 months with no supervision to follow.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he should be sentenced to the custody of the Attorney General or his designee for a period of **18 months with no supervised release to follow**. The Magistrate Judge will make a recommendation of placement to a facility where defendant can receive vocational training and a substance abuse treatment evaluation.

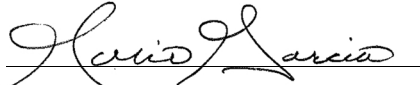
Defendant reviewed the above noted conditions with his attorney.

Defendant is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation. The Magistrate Judge will make a recommendation of placement to a facility where defendant can receive vocational training and a substance abuse treatment evaluation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge.

The parties waived the fourteen-day period to object to the Report and Recommendation.

Date: 6/9/2023


Mario Garcia
United States Magistrate Judge
Southern District of Indiana

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